

**BOROUGH OF FANWOOD
MAYOR AND COUNCIL REGULAR MEETING
NOVEMBER 17, 2014**

The Regular Meeting of the Mayor and Council was held on November 17, 2014 at Borough Hall, 75 North Martine Avenue, Fanwood, NJ 07023 at 7:04 PM.

Council President Huegel stated: I hereby announce and request that such be included in the minutes of the meeting that notice of time, place and date of this meeting has been prominently posted on the bulletin board at Borough Hall; mailed to the Times, The Star Ledger, Courier News, PATCH, Alternate Press by January 10, 2014 filed with the Borough Clerk and mailed to any person requesting same in accordance with the requirements of the Open Public Meeting Act

The Pledge of Allegiance was led by Council President Huegel.

Eleanor McGovern, Borough Administrator, gave the invocation

Present: Kevin Boris, Russell Huegel, Tom Kranz, Daniel Levine, Katherine Mitchell, Jack Molenaar

Absent: Mayor Colleen Mahr

Also Present: Eleanor McGovern, Dennis Estis

MINUTES

Mitchell/Kranz moved to adopt the following minutes as presented. Kevin Boris, Daniel Levine and Jack Molenaar abstained on the November 5, 2014 Minutes. Motion carried.

Agenda Meeting	November 5, 2014
Special Meeting	November 5, 2014
Regular Meeting	October 21, 2014

APPOINTMENTS/RESOLUTIONS/PROCLAMATIONS/PRESENTATIONS

Presentations:

Councilwoman Mitchell presented Parthena Rosahl, Friends of the Library, with a Devlin print for her volunteer service especially the Book Sale.

Appointments:

Jan Siegal was appointed to the Cultural Arts Committee

CORRESPONDENCE

1. Fanwood Lions Club
Re: Permission to sell Christmas Trees at LaGrande Park
Disposition: Permission granted.
2. Fanwood Lions Club
Re: Putting up Nativity figures on North Avenue/Community House
Disposition: Permission granted.
3. City of Summit
Re: Resolution supporting S-444 and A-1779, amending the NJ Spill Compensation and Control Act.

Disposition: Resolution on 11/17/2014 agenda

COUNCIL REPORTS

A. Administration and Finance (Councilman Levine)

Molenaar/Mitchell moved the Tax Collector Report for the month of October. Motion carried.

Levine/Mitchell moved the Payment of Claims for the month of November. Motion carried on the following roll call vote.

BE IT RESOLVED that claims in the amount of \$2,508,849.21 having been listed on the Bill List and recorded in the files of the Borough Hall, and approved by the Chairman of the appropriate Committee, be paid.

FOR: Levine, Mitchell, Boris, Huegel, Kranz, Molenaar

AGAINST: None

ABSTAINED: None

ABSENT: None

Councilman Levine stated that the Finance and Administration Committee is currently establishing the Capital Budget for 2015.

B. Public Safety (Councilwoman Mitchell)

Councilwoman Mitchell reported for the Police Department, Library, Seniors and the Ministerium

C. Public Works (Councilman Huegel)

Councilman Huegel reported for the Public Works Department

D. Land Use and Historic Preservation (Councilman Molenaar)

Councilman Molenaar had no report.

E. Recreation and Community Services (Councilman Boris)

Councilman Boris reported for the Recreation Commission and gave dates for all the events remaining in 2014.

F. Health and Senior Citizens (Councilman Kranz)

Councilman Kranz reported that the Flu Shot will be available at Forest Road Park. He reported for the Rescue Squad.

MEETING OPEN TO THE PUBLIC

Mitchell/Kranz moved to open the meeting to the public. Motion carried.

No one spoke.

Mitchell/Kranz moved to close the meeting to the public. Motion carried.

OLD BUSINESS

A. Administration and Finance (Councilman Levine)

Levine/Mitchell moved to adopt Resolution 14-10-161. Motion carried on the following roll call vote.

WHEREAS, Borough Council awarded the contract for grant research and grant submission to Millennium Strategies, 60 Roseland Avenue, Caldwell, NJ 07006, through Resolution 14-01-17 in the amount of \$12,000.00, and

WHEREAS, additional work was required in submitting the grants on behalf of the Borough.

NOW, THEREFORE BE IT RESOLVED by the Borough Council that Millennium's contract is hereby increased in an amount not to exceed \$14,375.00.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to Millennium Strategies and the Borough Treasurer.

FOR: Levine, Mitchell, Boris, Huegel, Kranz, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

NEW BUSINESS

A. Administration and Finance (Councilman Levine)

Levine/Mitchell moved to adopt Resolution 14-11-170. Motion carried on the following roll call vote.

**RESOLUTION REQUESTING APPROVAL OF ITEMS OF
REVENUE AND APPROPRIATION
NJS 40A:4-87
(With Matching funds for grants)**

WHEREAS, NJS 40a:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, the Director may also approve the insertion of an appropriation for the equal amount;

NOW, THEREFORE, BE IT RESOLVED that the **Mayor and Council of the Borough of Fanwood**, in the county of Union, New Jersey, hereby requests revenue in the budget of the year 2014 in the sum of **\$724.00**, which is now available as a revenue from **Union County, Greening Union County Grant Program Grant**, pursuant to the provision of the statute, and

BE IT FURTHER RESOLVED that the sum of \$724.00 is hereby appropriated under the caption **2014 Greening Union County Grant**; and

BE IT FURTHER RESOLVED that the sum of **\$724.00** representing the amount required for the municipality's share of the aforementioned undertaking or improvement appears in the budget of the year **2014** under the caption **Matching Funds for Grants** and is hereby appropriated under the caption of **Matching Funds for Grants**; and

BE IT FURTHER RESOLVED that the above is a result of a County grant of **\$1,356.50** from **Union County, Greening Union County Grant Program**.

FOR: Levine, Mitchell, Boris, Huegel, Kranz, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

Resolution 14-11-173

Levine/Boris moved to adopt Resolution 14-11-173. Motion carried on the following roll call vote

GARDEN STATE MUNICIPAL JOINT INSURANCE FUND
JOINT TRUST AGREEMENT AND RESOLUTION TO REJOIN

WHEREAS, a number of local governmental units in the State of New Jersey have joined together to form a Joint Insurance Fund as permitted by the Chapter 372 Laws of 1983 (40A:10-36); and

WHEREAS, the statutes and regulations governing the creation and operation of a Joint Insurance Fund contain elaborate restrictions and safeguards concerning the safe and efficient administration of the public interest entrusted to such a Fund; and

WHEREAS, the Governing Body of the Borough of **Fanwood**, has determined that membership in the Garden State Municipal Joint Insurance Fund (hereinafter referred to as the "Fund") is in the best interests of itself and its citizens; and

WHEREAS, the Governing Body of the Borough of **Fanwood**, has previously executed a resolution to join the Garden State Municipal Joint Insurance Fund subject to the acceptance of its assessment;

NOW, THEREFORE, BE IT RESOLVED that the Governing Body of the Borough of **Fanwood** (hereinafter referred to as the "Municipality") does hereby resolve and agree to renew its membership in the Fund for a period not to exceed three (3) years beginning January 1, 2015 to December 31, 2017 for the purpose of establishing the following types of coverage:

- Workers' Compensation and Employer's Liability;
- General Liability including law enforcement and public officials liability;
- Motor vehicle liability;
- Property damage (buildings, contents, equipment, and motor vehicle);

BE IT FURTHER RESOLVED, that the Municipality has never defaulted on claims and has not been canceled for nonpayment of insurance premiums for a period of at least two years prior to the adoption of this Resolution; and

BE IT FURTHER RESOLVED, that the Mayor and the Municipal Clerk are authorized and directed to execute the Indemnity and Trust Agreement and such other documents signifying membership in the Fund and to deliver same to the Executive Director of the Fund with the express reservation that said document shall become effective only upon approval by the New Jersey Department of Insurance and the Department of Community Affairs.

FOR: Levine, Boris, Huegel, Kranz, Mitchell, Molenaar

AGAINST: None

ABSTAINED: None

ABSENT: None

Resolution 14-11-174

Levine/Boris moved to adopt Resolution 14-11-174. Motion carried on the following roll call vote

WHEREAS, there appears to be insufficient funds in the following accounts to meet the demands thereon for the balance of the 2014 year budget: and

WHEREAS, there appear to be surplus funds in the following accounts over and above the amount deemed to be necessary to fulfill the purpose of the appropriation for the balance of the 2014 year

budget: and

NOW, THEREFORE BE IT RESOLVED, the Chief Financial Officer is hereby authorized and directed to make the following transfers:

FROM:

Mayor S&W	\$2,000.00	Audit	\$1,000.00
Planning Bd O&E	\$2,500.00	Group Health	\$20,000.00
Unemployment	\$10,000.00	Road Repair O&E	\$10,000.00
Right to Know O&E	\$1,000.00	Right to Know O&E	\$980.00
Downtown O&E	\$10,000.00	Tax O&E	\$120.00

TO:

Finance O&E	\$3,600.00	Legal O&E	\$40,000.00
Celebration O&E	\$4,000.00	Gas & Diesel	\$10,000.00

FOR: Levine, Boris, Huegel, Kranz, Mitchell, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

Resolution 14-11-175

Levine/Boris moved to adopt Resolution 14-11-175. Motion carried on the following roll call vote

WHEREAS, the Borough purchased Block 64, former Lots 4 and 21 (the “Property”) for redevelopment purposes on August 6, 2008 from the Livingston-Wilbor Corporation; and

WHEREAS, shortly after purchase, significant environmental contamination was discovered at the Property; and

WHEREAS, the Livingston-Wilbor Corporation filed suit against the Borough in the Superior Court of New Jersey (Docket No. UNN-L-3825-11) for payment of two amounts reduced from the purchase price of the Property pursuant to the Purchase and Sale Agreement; and

WHEREAS, the Borough filed a Counterclaim against the Livingston-Wilbor Corporation and Third-Party Complaints against Third Party Defendants Garry O. Wilbor, Brinkerhoff Environmental Services, Inc., Laura A. Brinkerhoff, and Station Square at Fanwood, LLC; and

WHEREAS, Answers, Counterclaims, and Cross claims have been filed by and between the Parties as related to the aforementioned litigation, which has been ongoing for the past three years; and

WHEREAS, the Borough, Brinkerhoff Environmental Services, Inc., Laura A. Brinkerhoff, and Station Square at Fanwood, LLC have amicably reached an agreement to settle and resolve same; and

WHEREAS, a Settlement Agreement, Release, and Covenant Not to Sue has been prepared and is attached hereto as EXHIBIT A; and

WHEREAS, a Stipulation of Dismissal, With Prejudice, and Without Costs and/or Attorneys' Fees has been prepared and is attached hereto as EXHIBIT B; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fanwood that, the authority of the Mayor to execute the Settlement Agreement, Release, and Covenant Not to Sue in substantially the form presented is hereby affirmed; and

BE IT FURTHER RESOLVED THAT the authority of Sedita, Campisano & Campisano, LLC, Special Environmental Counsel to the Borough, to execute the Stipulation of Dismissal, With Prejudice, and Without Costs and/or Attorneys' Fees in substantially the form presented is hereby affirmed.

FOR: Levine, Boris, Huegel, Kranz, Mitchell, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

Resolution 14-11-176

Levine/Boris moved to adopt Resolution 14-11-176. Motion carried on the following roll call vote

WHEREAS, the Mayor and Council have a need to acquire environmental engineering services ("Services"), by means of a fair and open contract procedure pursuant to the provisions of N.J.S.A. 19:44A-20.5, and

WHEREAS, the Borough Clerk has determined that the value of the Services may exceed \$17,500, and

WHEREAS, CTM responded to the Borough's Request for Qualifications on May 10, 2013 and the Borough has deemed it to be appointed Environmental Engineer, and

WHEREAS, CTM Environmental, 200 Pennsville-Auburn Road, Pedricktown, NJ 08067 will provide environmental engineering services to the Borough regarding the preparation of the Livingston Wilbor Litigation and the submission of the HDSRF grant, and

WHEREAS, the Mayor and Council have determined to retain said firm.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fanwood that CTM Environmental be, and hereby is, appointed to perform environmental engineering services on behalf of the Borough of Fanwood as outlined above.

BE IT FURTHER RESOLVED that a copy of the attached notice be printed once in The Times of Scotch Plains within 10 days from this date.

BE IT FURTHER RESOLVED that the Mayor and Borough Clerk be, and hereby are, authorized to enter into a contract in accordance with the terms of this Resolution and the attached Notice.

**BOROUGH OF FANWOOD
NOTICE OF AWARD OF CONTRACT
FOR PROFESSIONAL SERVICES BY THE BOROUGH OF FANWOOD
RESOLUTION 14-11-176**

CONTRACTOR: CTM Environmental
200 Pennsville-Auburn Road
Pedricktown, NJ 08067

NATURE OF SERVICE: Environmental Engineering Services
regarding the preparation of the Livingston Wilbor
Litigation and
the submission of the HDSRF grant

DURATION: Period ending November 30, 2014

AMOUNT: Not to exceed \$21,687.50

A copy of this resolution and contract relating to the services are on file and available for public inspection in the Municipal Clerk's office.

FOR: Levine, Boris, Huegel, Kranz, Mitchell, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

Resolution 14-11-177

Levine/Boris moved to adopt Resolution 14-11-177. Motion carried on the following roll call vote

WHEREAS, in 2005 the State of New Jersey ("State") and the New Jersey Department of Environmental Protection ("NJDEP") commenced a civil litigation against a series of corporations that the NJDEP determined to be responsible for contamination of specific areas of the Passaic River, entitled New Jersey Department of Environmental Protection v. Occidental Chemical Corporation, et al, bearing Docket No. ESX-L-9868-05, in the Supreme Court of New Jersey, Law Division, Essex County (the "Litigation"), and

WHEREAS, the litigation was expanded by the corporate defendants to include multiple municipal entities and municipal utilities and sewer entities as third party defendants ("Municipal Entities") under the theory that said Municipal Entities contributed to the contamination of the Passaic River via the discharge of wastewater directly or indirectly through wastewater treatment facilities, and

WHEREAS, in all a total of 71 municipalities, 6 municipal wastewater and 9 State entities were named as third party defendants and brought into the litigation, and

WHEREAS, despite the fact that the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 (the "Act"), specifically excludes wastewater stating "...sewage and sewage sludge shall not be considered as hazardous substances..." for purposes of the Act, the Municipal Entities were not permitted to be dismissed from the litigation, and

WHEREAS, the Municipal Entities engaged in settlement negotiations with the State with the

intent of developing a resolution of the litigation such that the Municipal Entities could be released from the process through the entry of a Consent Judgment, and

WHEREAS, pursuant to the terms of the Consent Judgment, each of the Municipal Entities was required to pay, and did pay to the State, either as a cash payment or as a deduction in property tax relief funding, an amount equal to \$95,000 on or before March 23, 2013, and

WHEREAS, S-444 and A-1779 have been introduced and will amend the New Jersey Spill Compensation and Control Act to specifically state that any domestic, commercial, or industrial wastewater, sewage, or sewage sludge expelled or released from a public sewer system or a public sewage treatment plant, are exceptions from the Spill Act, and

WHEREAS, S-444 and A-1779 clarify the intent of the Legislature and will assure that taxpayers will not be held liable in similar circumstances going forward.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Fanwood:

1. That it does hereby support S-444 and A-1779 as means to clarify the intent of the State Legislature and provide that taxpayers will not be held liable in such circumstances going forward.
2. That a copy of this resolution be transmitted to Governor Chris Christie, Senate President Stephen Sweeney, Assembly Speaker Vincent Prieto, Fanwood's Legislative Delegation, City of Summit and the NJ League of Municipalities.

FOR: Levine, Boris, Huegel, Kranz, Mitchell, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

B. Public Safety (Councilman Mitchell)

Resolution 14-11-169

Mitchell/Kranz moved to adopt Resolution 14-11-169. Motion carried.

WHEREAS, **Elliott Bernard** has completed the necessary requirements for an in-grade promotion to Patrolman B, and

WHEREAS, the Chief of Police certifies that the prerequisites for in-grade promotion have been accomplished and has recommended that Elliott Bernard be promoted to Patrolman B, on December 14, 2014.

NOW, THEREFORE, BE IT RESOLVED, the Mayor and Council do hereby authorize Elliott Bernard's promotion to Patrolman B on December 14, 2014.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Borough Treasurer to make the necessary salary adjustment.

C. Land Use and Historic Preservation (Councilman Molenaar)

Resolution 14-11-178

Molenaar/Kranz moved to adopt Resolution 14-11-178. Motion carried on the following roll call vote.

WHEREAS, Elite Properties submitted a Performance Guarantee to cover the redevelopment of Fanwood Crossings, Phases II and III in the amount of \$736,850.48 with a cash portion of \$73,580.04, and

WHEREAS, Elite Properties has partially completed the redevelopment of Block 64, Lots 5.01(A), 5.01(B), 5.01(C), 6.01 and 6.02 and is accordingly requesting a reduction to the cash portion of the performance guarantee, and

WHEREAS, the Borough Engineer is recommending a return of \$43,360.89, leaving a cash balance of \$30,291.16 (\$736,850.48- \$433,878.84 work performed=\$302,711.64 work remaining=\$30,291.16).

NOW, THEREFORE, BE IT RESOLVED by Borough Council that \$43,360.89 of the original cash guarantee be released to Elite Properties.

FOR: Molenaar, Kranz, Boris, Huegel, Levine, Mitchell, Molenaar
AGAINST: None
ABSTAINED: None
ABSENT: None

MEETING OPEN TO THE PUBLIC

Molenaar/Mitchell moved to open the meeting to the public. Motion carried.

Mike Lewis, 41 Beech Avenue, questioned Resolution 14-11-175 relating to the Livingston Wilbor Litigation.

Kranz/Molenaar moved to close the meeting to the public. Motion carried.

COUNCIL COMMENTS

Councilmen Molenaar, Mitchell, Levine congratulated Councilman Boris and Huegel for being re-elected to Council.

Councilmen Boris, Huegel thanked the voters.

Councilman Kranz spoke about the Santa event that is run by the Fire Department each year and encouraged the residents to get the presents to the Fire Department on time.

ADJOURNMENT

Molenaar/Mitchell moved to adjourn at 7:40 pm. Motion carried.

Respectfully submitted,

Eleanor McGovern
Borough Clerk